

1 Q I would like to refer you, Mr. Rey, to Rainbow
2 Exhibit No. 5, which is the order resetting preliminary
3 injunction hearing.

4 Do you have that in front of you?

5 A Yes.

6 Q Is it your testimony today -- well, strike that.

7 I believe you were not clear this morning, but let
8 me just ask you this.

9 Is it your best testimony that this is -- this
10 reflects the prehearing conference decision that you've
11 described this morning from November of 1990?

12 A What I recall from the prehearing conference, Mr.
13 Cole, is that the judge brought up the subject of the
14 preservation of the status quo. The word "construction"
15 comes to mind, that he didn't want any -- I don't know how
16 to answer you that, sir.

17 Q Well, let me ask you this question.

18 Refer to paragraph, numbered paragraph two on page
19 1 of this order.

20 A Yes.

21 Q Which is, again, Rainbow Exhibit No. 5. And as I
22 read that, it says, "Defendants have agreed to continue to
23 preserve the status quo until January 11, 1990."

24 Do you see that?

25 A Yes.

1 Q Was there ever an order subsequent to January 11,
2 1990, continuing that status quo preservation beyond January
3 11, 1990, to your knowledge?

4 A Yes. Further down it says, "until the outcome is
5 determined," the end of that paragraph. If you read it all
6 the way through it goes "until the outcome is determined."

7 Q Okay.

8 MR. COLE: Mr. Rey, let me show you a document,
9 and I am asking Ms. Farhat to provide the original and one
10 copy to the reporter, and copies to Judge Chachkin and
11 yourself and counsel of a two-page document bearing
12 unnumbered, unpaginated cover page entitled "Certified Copy
13 of Order of Status Conference Filed by the Court in Rey v
14 Guy Gannett Publishing Company," and citation of the case,
15 November 30, 1990.

16 And ask you to take a look at that.

17 (Witness reviews document.)

18 MR. COLE: Your Honor, I would like to have this
19 marked as Press Exhibit No. 14.

20 JUDGE CHACHKIN: The document described is so
21 marked.

22 (The document referred to was
23 marked for identification as
24 Press Exhibit No. 14.)

25 MR. COLE: Thank you.

1 BY MR. COLE:

2 Q Mr. Rey, have you had a chance to look at this?

3 A Yes, I have.

4 Q First, does this refresh your recollection as to
5 the date of the prehearing conference which you have
6 testified about?

7 A It's November. I mean, it very well could have
8 been that.

9 Q How many conferences prior to the hearing did you
10 attend in the Miami litigation?

11 A I don't recall, but I tried to attend every single
12 conference or meeting with the judge and counsel.

13 Q Now, you reviewed the document which I have just
14 provided to you, which is identified as Press Exhibit No.
15 14; is that correct?

16 A Yes, I've read it.

17 Q Does this reflect any prohibition against Rainbow
18 from constructing its station?

19 A Again, Mr. Cole, I recall from that prehearing
20 conference the judge bringing up the subject of the
21 preservation of the status quo. I also remember the word
22 "construction" being used by the judge. I thought he meant
23 everybody. He definitely meant that I could not go through
24 the landlord, which I was required to do under these, for
25 construction.

1 I don't know how to answer you other than that,
2 sir.

3 MR. COLE: Your Honor, I am going to provide to
4 the reporter, Your Honor, and counsel another document which
5 I would like to have marked for identification as Press
6 Exhibit 15, which is a 12-page document bearing an
7 unpaginated, unnumbered cover sheet entitled "Certified Copy
8 of Docket Sheet" from the Office of the Clerk, United States
9 District for the Southern District of Florida, which
10 reflects the docket entry consists of the entirety of the
11 docket sheet from the clerk's office of that clerk in the
12 Miami litigation.

13 JUDGE CHACKIN: The document described by counsel
14 will be marked for identification as Press Exhibit 15.

15 (The document referred to was
16 marked for identification as
17 Press Exhibit No. 15.)

18 BY MR. COLE:

19 Q Mr. Rey, would you please review this, in
20 particular, the docket entries which goes chronologically
21 from 11-8-90 on page 4 through 1-7-91 on page 5; and
22 particularly what I would like you to determine is the
23 number of conferences which are listed.

24 MS. POLIVY: Would you like a stipulation?

25 MR. COLE: Yes, if you would like to stipulate,

1 that would be great.

2 MS. POLIVY: How many do you say there are?

3 MR. COLE: One.

4 MR. EISEN: 11-27-1990?

5 MR. COLE: That's correct.

6 MS. POLIVY: We'll stipulate.

7 JUDGE CHACHKIN: The stipulation is accepted.

8 MR. COLE: Thank you, Your Honor.

9 BY MR. COLE:

10 Q Mr. Rey, if there was only one status conference
11 in this case in November of 1990, it would have been that
12 November 27, 1990, status conference that you attended,
13 would that be correct?

14 A It appears so from what you are showing me.

15 Q And you attended that status conference.

16 Did RBC's local Miami counsel also attend?

17 A Oh, yes, I wouldn't be there without the attorney.

18 Q And in the course of that conference Judge Marcus
19 said something that convinced you that RBC was prohibited
20 from construction.

21 Is that your testimony?

22 A Mr. Cole, again, I recall the judge raising the
23 subject of the preservation of the status quo. I also
24 recall the judge saying something regarding construction not
25 to take place.

1 I mean, here in 1996, that's what I recall.
2 Rainbow cannot build the transmitter building, which is step
3 one of the construction, without the landlord. The landlord
4 wanted to build a three-room building at the same time. To
5 me, it was clear that it couldn't be done, never mind that
6 the landlord is not talking to me during this period of
7 litigation, but specifically it is clear in my mind, at
8 least in my recollection, that the judge brought up the
9 subject, and that the judge spoke about construction not to
10 take place.

11 MR. COLE: Your Honor, I would like to approach
12 the witness and provide to the court reporter and Your Honor
13 and hand the witness a document which is 18 pages in length,
14 and I with an unnumbered, unpaginated cover page which is
15 entitled "Transcript of Hearing Conducted in Rey v Guy
16 Gannett Publishing Company, November 27, 1990, and ask that
17 that be marked for identification as Press Exhibit No. 16.

18 JUDGE CHACHKIN: The document will be marked as
19 Press Exhibit 16.

20 (The document referred to was
21 marked for identification as
22 Press Exhibit No. 16.)

23 MR. COLE: And I would like the witness to read
24 this. While he is doing so, I would advise the Court that
25 this is a transcript of the November 27th status conference

1 in Rey v Gannett, about which he has been testifying.

2 JUDGE CHACHKIN: All right, we will go off the
3 record to allow the witness to read the exhibit.

4 (Discussion off the record.)

5 JUDGE CHACHKIN: Back on the record.

6 MS. POLIVY: I have no objection to the witness
7 reading, but I do not understand the relevance of this line
8 of questioning to prove something that was never claimed by
9 Rainbow.

10 If Mr. Cole is trying to --

11 JUDGE CHACHKIN: The witness has testified --

12 MS. POLIVY: -- show that the court ordered
13 Rainbow not to construct, Rainbow has never claimed that the
14 court ruled that Rainbow not to construct.

15 JUDGE CHACHKIN: The witness has testified
16 repeatedly that that was the motivation behind why he didn't
17 construct at that point.

18 MS. POLIVY: He explained that the court wanted
19 the Defendant, which was not Rainbow --

20 JUDGE CHACHKIN: That is not what he testified to.
21 He regarded it as the -- as the conjunction against
22 construction both applying to Defendant and to Rainbow. He
23 has testified three or four times about that today. He just
24 did five minutes ago.

25 We will go off the record and permit the witness

1 to read the material.

2 (Whereupon, a recess was taken.)

3 JUDGE CHACHKIN: The witness has indicated he has
4 read the material.

5 BY MR. COLE:

6 Q Mr. Rey, can you point to any portion or portions
7 of this conference transcript which convinced you that
8 Rainbow was prohibited from construction by Judge Marcus?

9 MS. POLIVY: I am going to object to the question.
10 He hasn't laid a foundation that the witness has ever seen
11 this before.

12 JUDGE CHACHKIN: Overruled. Go ahead with your
13 question.

14 MR. COLE: Thank you.

15 MS. POLIVY: Well, Your Honor, if he has never
16 seen it before --

17 JUDGE CHACHKIN: He has now seen it. He has
18 testified that there was something -- unless you want to say
19 that this not an authentic document, this is a transcript of
20 what took place. The witness has testified that Judge
21 Marcus made a ruling or said something. The witness has now
22 been given the transcript, and the witness can now show
23 where in the transcript Judge Marcus said what he claims he
24 said.

25 Overruled. Let's proceed.

1 MS. POLIVY: Can I hear the question?

2 MR. COLE: Of course, Ms. Polivy.

3 BY MR. COLE:

4 Q Would you please point out any portion or portions
5 of this conference transcript which convinced you that
6 Rainbow was prohibited from construction by Judge Marcus?

7 MS. POLIVY: Your Honor, the question asks
8 "convinced," in the past tense. If the question is
9 convinces him now, that's a different thing.

10 JUDGE CHACHKIN: We are not talking about now. We
11 are talking about then.

12 Overruled.

13 THE WITNESS: Mr. Cole, as I said this morning, I
14 said a couple of things this morning. One was that Rainbow
15 cannot construct without the landlord. I also said that I
16 recall as I sit here today that this prehearing conference
17 the judge wanted to preserve the status quo. I read this
18 and I see that he wants to preserve the status quo. He
19 specifically talks about Defendants. So he doesn't address
20 the Plaintiff. That I see.

21 I still believe that Rainbow cannot build without
22 the landlord, and the landlord had a clear desire to build
23 three rooms, as I outlined this morning, in a single
24 construction.

25 So the landlord is not talking to me. We're

1 litigating. I don't think I could have built. To this day,
2 I have the same opinion. I don't think Rainbow could have
3 built.

4 BY MR. COLE:

5 Q So is your testimony that there is no language in
6 this transcript which reflects the prohibition by Judge
7 Marcus against Rainbow in construction?

8 A As I read this, sir, I didn't find it, no.

9 Q Let me also direct your attention, Mr. Rey, to
10 page 12, line 19 and 20 -- sorry -- 18, 19, and 20 of the
11 transcript where Judge Marcus says, "All right, let's do
12 this then. We are going to ask you to prepare a simple
13 order, Mr. Fromberg, reflecting the following," and then
14 there is a series of things that the judge wanted perfected
15 in the order.

16 Who is Mr. Fromberg?

17 A Fromberg was the attorney for Rainbow in this
18 proceeding.

19 Q So he was your lawyer, wasn't he?

20 A I just said he was attorney for Rainbow in this
21 proceeding.

22 Q Do you have any reason to believe that Judge
23 Fromberg did not -- that Mr. Fromberg did not comply with
24 this order of Judge Marcus to prepare an order?

25 A I don't follow your question. I'm sorry.

1 Q Well, did you read this language on page 12 that I
2 just --

3 A Yes.

4 Q -- directed you to where Judge Marcus asks Mr.
5 Fromberg to prepare a simple order reflecting certain items
6 which are then set forth on pages 12 and 13?

7 A Right.

8 And what is the question?

9 Q Do you have any reason to believe that Mr.
10 Fromberg did not comply with that order and prepare some
11 such order?

12 MS. POLIVY: Objection. How would he have any
13 reason to believe one way or the other? He is asking what
14 somebody else did. He first has to lay a foundation that he
15 knows.

16 JUDGE CHACHKIN: I will sustain the objection.

17 Do you have the order prepared by Fromberg?

18 MR. COLE: Your Honor, all I have is the November
19 30 order which has been identified in the record as Press
20 Exhibit No. 14, which was issued three days after the
21 November 27th status conference, and which reflects in it a
22 paragraph that this cause came before the court on November
23 27, 1990, at a status conference, and the court having heard
24 argument of counsel, and being otherwise duly advised in
25 terms of, and it is thereupon ordered and so forth. That is

1 the, again, Press Exhibit 14.

2 What I am trying to determine if Mr. Rey has any
3 reason to believe that that order was not written by Mr.
4 Fromberg.

5 MR. EISEN: Well, that's just a negative of way of
6 saying the same thing that Ms. Polivy objected to. I would
7 object to that question to.

8 JUDGE CHACHKIN: Is 14 in evidence? Do you want
9 to put 14 in now?

10 MR. COLE: I will offer 14 because he has
11 testified about it. I offer into evidence, Your Honor, the
12 document which as been identified as Press Exhibit No. 14, a
13 certified copy of an order of status conference issued on
14 November 30, 1990.

15 MS. POLIVY: Your Honor, simply because Mr. Cole
16 has given a copy of this to the witness and asked him to
17 read it does not mean that he has testified to it. It
18 doesn't overcome the question of relevance.

19 Unless Mr. Cole can show that Rainbow has claimed
20 that Judge Marcus prevented Rainbow from going forward, I
21 continue to say there is no relevance to this.

22 JUDGE CHACHKIN: Well, you will have an
23 opportunity to read the transcript of this witness's
24 testimony both this morning and this afternoon, and you will
25 be able to see what this witness has explained.

1 MS. POLIVY: The issue, Your Honor, is whether
2 Rainbow misrepresented to the Commission or lacked candor
3 with respect to the tower litigation. That was with respect
4 to the fifth and sixth extension. Rainbow never claimed in
5 the fifth or sixth extension that Judge Marcus ordered them
6 not to proceed with construction.

7 JUDGE CHACHKIN: We have this witness's testimony,
8 and he's a principal. He apparently -- that's his
9 testimony. Whether it was claimed to the Commission or not,
10 he's testified under oath as to the reason why Rainbow did
11 not proceed with construction at this point.

12 MS. POLIVY: He testified as to his understanding,
13 Your Honor.

14 JUDGE CHACHKIN: He was the principal who had to
15 make a decision, and he testified as the reason why Rainbow
16 did not go forward. That's his testimony.

17 MS. POLIVY: But, Your Honor.

18 JUDGE CHACHKIN: That fact that it wasn't claimed
19 to the Commission is irrelevant.

20 MS. POLIVY: How is that irrelevant to the issue?
21 How can it be irrelevant to the issue?

22 JUDGE CHACHKIN: I am not going to argue with you.
23 I am going to receive order of status conference, Exhibit
24 14.

25 MR. COLE: Thank you, Your Honor.

1 JUDGE CHACHKIN: It certainly goes to an
2 impeachment of this witness and his credibility if it varies
3 from what Rainbow previously claimed and what Rainbow is now
4 claiming.

5 (The document referred to,
6 having been previously marked
7 for identification as Press
8 Exhibit No. 14, was received
9 in evidence.)

10 MR. COLE: Your Honor, I would also like to offer
11 into evidence at this time Press Exhibit 15, which is the
12 certified copy of the docket sheet.

13 MS. POLIVY: Your Honor, we have given a
14 stipulation.

15 JUDGE CHACHKIN: What is 15?

16 MR. EISEN: It's a docket list.

17 MS. POLIVY: The purpose was how many status
18 conferences we see, and we stipulated.

19 MR. EISEN: We stipulated to November 27th.

20 JUDGE CHACHKIN: Is that the only purpose you want
21 to offer it?

22 MR. COLE: Yes, Your Honor.

23 JUDGE CHACHKIN: All right, then, 15, you are
24 withdrawing your request for 15?

25 MR. COLE: Yes.

1 JUDGE CHACHKIN: All right.

2 MR. COLE: And I would like to offer into evidence
3 the document which has been identified as Press 16, a
4 transcript of the hearing of November 27, 1990.

5 JUDGE CHACHKIN: First, with respect to 15, the
6 request for admission has been withdrawn.

7 And as far as 16, any objection?

8 MS. POLIVY: Your Honor, I have made my objection.

9 JUDGE CHACHKIN: All right. Does anyone else have
10 any objection?

11 Press Exhibit 16 is received.

12 (The document referred to,
13 having been previously marked
14 for identification as Press
15 Exhibit No. 16 was received in
16 evidence.)

17 MR. COLE: Thank you, Your Honor.

18 MR. COLE: Your Honor, if I may approach the
19 witness. Again, I have a document I would like to show him.

20 JUDGE CHACHKIN: Go ahead.

21 MR. COLE: Which is a document two pages in length
22 bearing the unnumbered, unpaginated cover page titled
23 "Excerpt, Page 130 of the Deposition of Joseph Ray Conducted
24 in Rey v Guy Gannett Publishing Co," dated December 18,
25 1990.

1 JUDGE CHACHKIN: That document will be marked for
2 identification as Press Exhibit 17.

3 (The document referred to was
4 marked for identification as
5 Press Exhibit No. 17.)

6 (Witness reviews document.)

7 BY MR. COLE:

8 Q Have you had a chance to read that, Mr. Rey?

9 A Yes.

10 Q Do you recall that on December 18, 1990, you were
11 deposed in connection with the Rey v Guy Gannett Miami tower
12 litigation?

13 A I know I was deposed. I don't know the exact
14 date, but I will take your word for it?

15 Q And let me refer you to page 2 of this exhibit,
16 lines 4 through 9. You were asked the question, "Is it your
17 understanding as you sit there right now if you want to put
18 the antenna up top that you can put it up at that height on
19 the tower?"

20 Answer: "I could put it up at that height but I
21 have to share it is what they are telling me."

22 Is that your testimony?

23 MS. POLIVY: Your Honor.

24 THE WITNESS: From what I read here.

25 MS. POLIVY: Excuse me. I object. I mean, we

1 have been given one page of a deposition. I can't even tell
2 what it's about. This isn't --

3 JUDGE CHACHKIN: Do you have his deposition, his
4 entire deposition?

5 MR. COLE: I have his entire deposition here. In
6 fact, I made it available to Rainbow at their request.

7 MR. EISEN: We have got it.

8 JUDGE CHACHKIN: Oh, Rainbow has the whole
9 deposition.

10 MS. POLIVY: Well, I haven't, Your Honor, number
11 one. And number two, I -- I mean, I don't know what this
12 page refers to, what's before it, what's after it.

13 JUDGE CHACHKIN: We are now at page two, page 130.

14

15 JUDGE CHACHKIN: We will go off the record to
16 permit the witness and counsel to review the preceding
17 pages.

18 (Pause off the record.)

19 JUDGE CHACHKIN: All right, let's go back on the
20 witness.

21 Have you had an opportunity to read that material?

22 THE WITNESS: I read the page before it, Your
23 Honor. I think I have an idea what this question was.

24 JUDGE CHACHKIN: All right. Go ahead, Mr. Cole.

25 BY MR. COLE:

1 Q My question was is the testimony which I read to
2 you which appears at page 130, or page 2 of Press Exhibit
3 No. 17, lines 4 through 9, an accurate statement of your
4 testimony in the deposition conducted on December 18, 1990?

5 A Is it accurate?

6 Q Yes.

7 Q Is that an accurate statement of what your
8 testimony was?

9 A I still don't understand the question.

10 MR. EISEN: Your Honor, the question is did he
11 testify truthfully at that time.

12 JUDGE CHACHKIN: Is that the question?

13 MR. COLE: I'm sorry. Yes, Your Honor.

14 THE WITNESS: From what I read here before it
15 dealt with the landlord's sudden interpretation of the lease
16 that was signed in 1986, and on page 129, line 12, there is
17 question that the landlord at one time was trying to tell me
18 that I was not going to be on the tower altogether unless I
19 shared the space, and that's what this answer goes to.

20 VOIR DIRE EXAMINATION

21 JUDGE CHACHKIN: So this is a truthful statement
22 as to what your understanding was, that you could build but
23 you would have to share the tower with Press; is that
24 correct?

25 THE WITNESS: Well, Your Honor, I would have to

1 read this whole deposition.

2 JUDGE CHACHKIN: I will permit you to read the
3 entire deposition if you want to, if you need to.

4 I mean this was a fact, wasn't it, that you could
5 build if you were willing to share the tower with Press?

6 THE WITNESS: Well, Your Honor, there is two
7 things --

8 JUDGE CHACHKIN: That was always the case, was it?

9 THE WITNESS: No. No, sir.

10 JUDGE CHACHKIN: You wanted exclusivity, isn't
11 that what that case was all about?

12 THE WITNESS: Sir, when I bought into the lease
13 they represented to me that there was a unique spot at 1500
14 feet.

15 JUDGE CHACHKIN: I understand that. I am not
16 going into that. But the fact of the matter is the landlord
17 did not preclude you from building there, but he wanted you
18 to share the space with --

19 THE WITNESS: No, sir. I mean, I have to build
20 through the landlord, and the landlord is not talking to me,
21 and the landlord wants to do a single construction scenario,
22 and they are not talking to me.

23 JUDGE CHACHKIN: What do you mean by a single
24 construction scenario?

25 THE WITNESS: Sir, Your Honor, there is a -- there

1 is an existing transmitter building at the base of the
2 tower, if you will.

3 JUDGE CHACHKIN: Yes.

4 THE WITNESS: There was a proposed addition of
5 three rooms. This is existing, this is proposed. Rainbow
6 was going to take one of these rooms, and the other two were
7 for future tenants. The landlord wants to build this entire
8 building in one construction.

9 Okay, the Judge Marcus orders goes that they
10 cannot do anything to change the status quo. I cannot start
11 my construction which is a transmitter building. That's
12 step one. I cannot undergo that.

13 JUDGE CHACHKIN: I thought we were talking about
14 the antenna site, and the whole litigation was about the
15 antenna site. The fact that you wanted to operate at the
16 1500 foot site, and you didn't want to share it.

17 THE WITNESS: That is correct.

18 JUDGE CHACHKIN: That's what the --

19 THE WITNESS: That was the litigation.

20 JUDGE CHACHKIN: That was what the litigation was
21 about, was it not?

22 THE WITNESS: That is correct, sir. That was the
23 litigation.

24 JUDGE CHACHKIN: And you could have put your
25 antenna on the 1500 foot site as long as you were willing to

1 share it with Press; isn't that true?

2 THE WITNESS: Well, that's the argument, that was
3 the Defendant's argument, sir.

4 My argument, the Plaintiff's argument was that it
5 was unique slot that was --

6 JUDGE CHACHKIN: I am not arguing what your
7 argument. I am saying is there was nothing precluding you
8 from building at 1500 feet, putting your antenna up at 1500
9 feet.

10 THE WITNESS: At what point in time, sir?

11 JUDGE CHACHKIN: At any point in time.

12 THE WITNESS: Well, Your Honor, please, you start
13 construction of a television station with a transmitter
14 building. I cannot do step one. How can I think of an
15 antenna? How do I handle the wave that got into the
16 transmitter building when it doesn't exist?

17 JUDGE CHACHKIN: Is there anything in the
18 litigation which deals with the transmitter building? I
19 thought the litigation dealt with this 1500 foot site?

20 Did I miss something?

21 THE WITNESS: But all of it is unbuilt, Your
22 Honor.

23 MR. EISEN: He has also testified with regard to
24 the lease of what the Defendant had to so insofar as
25 allowing him to build the transmitter. He couldn't have

1 gone up there and constructed his facility as long as the
2 Defendant wasn't able to give him the right to build the
3 transmitter building. It's all on the same site, Your
4 Honor.

5 MR. COLE: Objection, Your Honor. We are getting
6 a certain amount of testimony from counsel.

7 JUDGE CHACHKIN: As far as I know, did you ever
8 complain to the Court that you were precluded from operating
9 this transmitter building, or constructing this transmitter
10 building?

11 THE WITNESS: To the -- to which, Judge Marcus?

12 JUDGE CHACHKIN: Judge Marcus, anyone else. Did
13 you ever raise that argument, that you couldn't build
14 because you couldn't somehow construction this transmitter
15 building you are talking about?

16 THE WITNESS: We reference in the application for
17 extension, the litigation was referenced, that we
18 articulated in detail this particular - you know, the fact
19 that there was an injunction, temporary injunction order
20 from Marcus. I don't think it was done, but it was
21 referenced that we were held -- delayed, I think is the
22 language in the applications for extensions, Your Honor.
23 And we were.

24 Again, I think I have two years to build, you
25 know, and it's going to be delayed for a couple of months.

1 I mean, that is the reference that is made in the
2 applications for extension of construction permits fifth and
3 sixth.

4 MR. SILBERMAN: Your Honor, may I just --

5 JUDGE CHACHKIN: Yes.

6 MR. SILBERMAN: -- to possibly clarify this. I
7 think it's getting clouded.

8 Rey v Gannett, the decision of Judge Marcus on
9 June 6, 1991, published 766 Fed. Supp. 1142, of which we may
10 offer this as an exhibit, but you can take official notice.
11 Judge Marcus states, "This cause has come before the court
12 upon Plaintiff's motion for preliminary injunction against
13 Defendants, Guy Gannett Publishing Company, et al.
14 Plaintiffs, Rainbow Broadcasting Company, et al., seek the
15 entry of a preliminary injunction to prevent the Defendants
16 from leasing shared television antenna space in the Gannett
17 Bithlo Tower, in Bithlo, Florida, to Press Broadcasting
18 Company. Plaintiffs claim that Defendants leased to them an
19 exclusive top slot antenna space of the tower, and the
20 Defendants stated intentions to lease antenna space to
21 Press, overlapping the Plaintiff's top antennal slot
22 violates the terms of their lease agreement, and would
23 result in an irreparable harm to their business." And it
24 goes on to other assertions.

25 So I think the record should be clear as to what

1 the judge thought he was ruling on in the complaint that was
2 before him in 1991.

3 MS. POLIVY: Well, Your Honor, I don't know that
4 the clarification has clarified anything. The matter that
5 was at issue was the lease of antenna space. When you put
6 the lease in, that included a transmitter building at the
7 base of the antenna tower.

8 Judge Marcus's order, which is in this record,
9 told the Defendant specifically that they had to maintain
10 the status quo. As part of that the Defendant would not
11 build the transmitter building. That's how the transmitter
12 building gets into this.

13 JUDGE CHACHKIN: Well, did you make a specific
14 request after Judge Marcus's order to go ahead with the
15 construction of the transmitter building?

16 THE WITNESS: Within days of Judge Marcus's order
17 of June, sir.

18 JUDGE CHACHKIN: You did what? You asked the
19 landlord?

20 THE WITNESS: We asked the landlord let's go
21 ahead.

22 BY MR. COLE:

23 Q That is Judge Marcus's order of June 1990; is that
24 correct?

25 A I'm talking about when he ruled on the preliminary

1 junction in June of '91.

2 THE WITNESS: Is that what you are asking, Your
3 Honor?

4 JUDGE CHACHKIN: No, I am asking about the earlier
5 order.

6 MS. POLIVY: No.

7 JUDGE CHACHKIN: This prehearing conference we
8 have been talking about.

9 THE WITNESS: No, no.

10 MR. EISEN: Well, why can't we talk about Exhibit
11 5 which is the order that came out when he did provide for
12 the status quo. That was something that the parties all had
13 notice of.

14 The prehearing conference maybe established, or
15 the witness never saw the transcript of the prehearing
16 conference before. He certainly saw the order.

17 MR. COLE: If I might, Your Honor.

18 JUDGE CHACHKIN: Go ahead.

19 MR. COLE: The witness testified that he was there
20 present at that hearing.

21 MR. EISEN: And had a recollection --

22 MR. COLE: Excuse me for just a moment, please.

23 If he has a recollection that's different from
24 that which is reported in the transcript, he is certainly
25 free to so state. He hasn't so stated.